

UNDERSTANDING THE IMPLEMENTATION OF A LABOR AGREEMENT

Presented by:
Richard Kirkpatrick & Norm Beattie
Federal Mediation and Conciliation Service

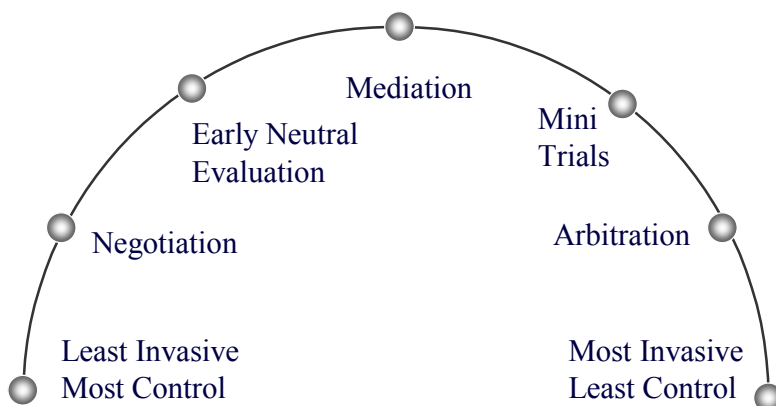
Office of Administration, Division of Personnel
LABOR RELATIONS

<http://www.oa.mo.gov/pers/laborrel.htm>

Terms

- Labor Agreement - The document which contains the terms and conditions the parties have negotiated and have agreement to within the workplace.
- Grievance Procedure – A specific step by step process to resolve workplace issues.
- Mediation – A process whereby a third party attempts to assist the parties in resolving whatever issues may be keeping them from reaching an agreement.
- Arbitration – A procedure whereby parties unable to agree on a solution to a problem allow a third party to make the decision for them.

Overview of Facilitated Procedures



Expectations

- Please list your expectations on implementing a Labor Agreement with the Union

Expectations

- Process out the lists.

PREPARATION:

- Existing Labor Agreement (policies, handbooks).
- Grievance and arbitration decisions.
- Work rules.
- Past practice.
- Laws.
- Court cases.

THE LABOR AGREEMENT

- Recognition.
- Management rights.
- Fringe items.
- Pay System.
- Grievance procedure.
- Movement Provisions.

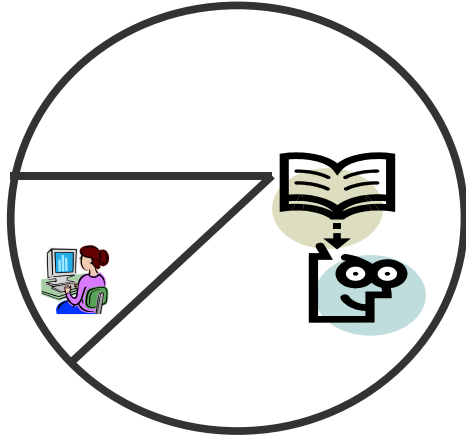
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- Leaves of absence.
- Union security, fair share, check off.
- Discipline procedure.

Management Rights in Non-Union Workplace



Management Rights in Unionized Workplace are Limited by a Labor Agreement



Implementing

- List questions regarding implementing a Labor Agreement.

Implementing

- Include steward or not in communications with employee?
- Are one on one communications still all right?
- What materials should be given to the union?
- What type of access should be given the union?

Implementing

- Supervisors & Stewards are equals in meetings.



Implementing



to Day operations:

1. How to build creditability between Labor & Management?
 - a. *Labor/Management committees.*
 - b. *You do not have to make a quick decision regarding labor agreement issues, etc.*

Implementing

- Submission of issues in grievance procedure.
- Process?
- To whom?
- Where and when?
- Ways to influence settlements.
- How to circulate, review, and react.
- Management's response.

Steps in Implementing

1. Study written grievances.
2. Examine the Labor Agreement.
3. Research applicable past practices.
4. Interview grievant.
5. Interview witnesses.
6. Arrange for site visit.

Steps in Implementing

7. Research technical/economic data of relevance.
8. Review previous arbitration awards involving the same issue.
9. Develop issue/complaint theory.
10. Research issue from employee point of view.

Steps in Implementing

11. Discuss issue with associates.
13. Determine if issue is a Labor Agreement violation.
14. Indicate desired remedy.

Standards of Labor Agreement Interpretation

- Clear and specific language.
- Specific language presides over general.
- Specific lists of items means those items not on the list were left off intentionally.

Standards of Labor Agreement Interpretation

- Agreement is interpreted as an entire document.
- Consistent terminology implies consistent meaning.
- Intent of the parties.

Past Practice

***Past practice is protected by the written agreement.
Generally past practices are created by management acting and creating a practice or allowing a condition to continue.***

Mutuality - Both parties must know about the practice.

2. **Consistency** - Has the practice been followed consistently when the situation arose?

3. **Bridge Effect** - Has the practice continued over two or more contracts? If so, there is stronger reason for finding the practice binding since it “bridged” a number of contracts.

4. **Contract is Silent** - A practice will be more binding if the contract is silent and both union and management have been using or abiding by the practice.

5. **Working Condition Vs Gratuity** - If a long standing practice involves a working condition as opposed to a gratuity, arbitrators will have a greater propensity to uphold the practice.

Definitions of Mediation

- An intervention by a third party neutral designed to facilitate negotiation.
- A **voluntary** and **confidential** process in which an impartial third party **assists** disputants in finding a **mutually acceptable solution** to their dispute.

Goals of Mediation

- Vent feelings and reduce hostility.
- Clear-up misunderstandings.
- Facilitate clear communications.
- Determine underlying interests.
- Find areas of agreement.
- Incorporate these into solutions devised by the parties.

Mediation Settlements

- More satisfied.
- More creative solutions.
- Feel better toward one another.
- Retain more control.
- Interests are better served.

Role of Mediator in Problem Solving

- Assist people in negotiating when their own attempts have failed.

Ugli Orange Exercise

- Process out exercise

Traditional Problem Solving Model

- Issues.
- Positions.
- Arguments.
- Power and compromise.
- Uneven outcome.

Interest-Based Model

- Minimizes the use of power in negotiation.
- Bases negotiation on identifying mutually beneficial solutions.

Positions vs. Interests

- Position is understanding what a party feels/believes/wants.
- Interest is determining why something is important.

Interest-Based Problem Solving Terms

- Issue.
- Position.
- Interest (Mutual and Separate).
- Options.
- Standards.

Interest-Based Problem Solving Assumptions

- Communication enhances relationships.
- All parties receive benefits.
- Each party should help the other.
- Open discussion expands interests and options.
- Standards replace power.
- Anger is defused.

Principles of Interest-Based Problem Solving

- Focus on issues, not personalities.
- Focus on interests, not positions.
- Create options to satisfy both mutual and separate interests.
- Evaluate options according to standards, not power.

Interest-Based Problem Solving Steps

- Identify the problem.
- Discuss all interests.
- Generate options.
- Select standards to evaluate options.
- Evaluate options using standards.
- Develop solution and capture in writing.

Interest-Based Problem Solving Techniques

- Brainstorming.
- Consensus-building.
- Problem-solving.
- Idea charting.

BATNA & WATNA

- Best Alternative to a Negotiated Agreement.
- Worst Alternative to a Negotiated Agreement.

Why have a good relationship?

- Less conflict in workplace.
- Settlements are easier.
- Less costly.
- Union becomes a partner in implementing changes.

What is Arbitration?

Method of settling disputes through an impartial third party whose decision is usually final and binding.

What is an Arbitrator?

An impartial third party to whom disputing parties submit their differences for decision.

Arbitration as a Last Resort

- A quasi-judicial process.
- Gives arbitrator power to issue a decision/award which may result in a win-lose situation.
- Parties lose control of dispute resolution.
- Costly.

The Grievance Arbitration Process

Three steps:

1. Preparation.
2. Hearing.
3. Award.

Other Suggestions

- Know your issues.
- Investigate the issues thoroughly.
- Is there anything the parties can agree to?

The Arbitration Hearing

- Who goes first?
 - Union (unless it's a discipline case).
- Burden of proof.
 - Lies with the union (unless it's a discipline case).
- Opening statements.

The Arbitration Hearing

- Case presentation.
- Evidence.
- Witnesses.
- Conclusion of hearing.

Arbitration Pointers

- Most cases won before the hearing.
- When presenting a grievance, phrase it in the most sympathetic and influential manner.
- Remember, the arbitrator's freedom in the case is defined by the contract AND your written statement.

Arbitration Pointers

- Honor the grievance process time lines.
- Remember that arbitrators are influenced by Labor Agreement language.

Other Rules to Remember

- Don't argue your case when presenting the facts.
- Don't try to establish your case thorough your opponent's witnesses.
- Don't ask a question in cross-examination to which you don't know the answer.

Standards of Discipline

- What is the role of a steward in discipline meetings?
 1. Support.
 2. Adviser.
 3. Cannot answer questions for employee.
 4. Does not control the process, management does.
 5. Cannot tell the grievant not to answer questions.

Standards of Discipline

- Investigation.
- Prior Notice.
- Consistent enforcement.
- Timeliness.
- Non-discriminatory.

Standards of Discipline

- Progressive.
- Gravity and intent.
- Mitigating circumstances.
- Sustainable penalty.

• **Seven Tests of Just Cause**

1. **Notice**: “Did the employer give the employee forewarning or foreknowledge of the possible or probable consequences of the employee’s disciplinary conduct?”
2. **Reasonable Rule or Order**: “Was the Employer’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business, and (b) the performance that the Employer might properly expect of the employees?”
3. **Investigation**: “Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?”

4. **Fair Investigation**: “Was the Employer’s investigation conducted fairly and objectively?”
5. **Proof**: “At the investigation, did the judge obtain substantial evidence or proof that the employee was guilty as charged?”
6. **Equal Treatment**: Has the Employer applied its rules orders, and penalties evenhandedly and without discrimination to all employees?”
7. **Penalty**: “Was the degree of the discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee’s proven offense, and (b) the record of the employee in his service with the Employer?”

📌 Just Cause: The Seven Tests (Coven and Smith, Coloracre Publications, 1985)
